

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

RECEIVED

JUL - 1 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Grande Communications, Inc.

)
)
)
)
)

CC Docket No. 96-45

ERRATUM OF GRANDE COMMUNICATIONS, INC.

Due to a filing error, a draft version of the "Petition for Waiver – Expedited Treatment Requested" of Grande Communications, Inc. ("Grande"), filed on June 30, 2003 in the above-referenced proceeding was erroneously filed with the Commission. Attached hereto is the final version of Grande's filing, which deletes material from the prior filed version. No substantive changes were made to the arguments presented by Grande in this final version. Please associate this corrected version with Grande's filing.

Respectfully submitted,

GRANDE COMMUNICATIONS, INC.

By:



Brad E. Mutschelknaus

Todd D. Daubert

Erin R. Swansiger

KELLEY DRYE & WARREN LLP1200 19th Street, N.W., Suite 500

Washington, D.C. 20036

(202) 955-9600

Its Attorneys

July 1, 2003

Encls.

cc: Andrew Kever, Esq., Grande Communications, Inc.
Thomas Buckley, Esq., Wireline Competition Bureau
Sharon Webber, Esq., Wireline Competition Bureau

0+4

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

JUL - 1 2003

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Grande Communications, Inc.

)
)
)
)
)

CC Docket No. 96-45

PETITION FOR WAIVER -- EXPEDITED TREATMENT REQUESTED

Grande Communications, Inc. ("Grande" or "the Company"), pursuant to Section 1.3 of the Commission's rules,¹ respectfully petitions the Commission for a waiver of the December 30, 2002 deadline established in Section 54.307(c)(4) of the Commission's rules for working loop data submissions of competitive eligible telecommunications carriers ("CETCs"), as well as a waiver of the January 1, 2003 certification deadline established in Section 54.314(d)(2) of the Commission's rules.

A waiver of Section 54.307(c)(3) would permit Grande to submit its line count information as of December 30, 2002, a data submission that is required in order for a carrier to receive funding in the second quarter of 2003. A grant of this waiver would render Grande eligible for funding as of May 22, 2003, the date of its designation as a CETC. A waiver of Section 54.314(d)(2) would permit Grande to be deemed certified as of January 1, 2003, a certification that is required in order for a carrier to receive funding in the second quarter of 2003. A grant of this waiver would render Grande eligible for funding as of May 22, 2003, the date of its designation as a CETC. Therefore, Grande requires a grant of both the line count and

¹ 47 C.F.R. § 1.3.

certification waivers in order to be eligible for funding as of the date of its designation as a CETC, in the second quarter of 2003, on May 22, 2003.

Grande requests that the Commission direct the Universal Service Administrative Company ("USAC") to accept a retroactively-filed December 30, 2002 line count submission as timely, and deem the Company certified as of January 1, 2003, in order to permit the Company to receive rural high-cost universal service support effective as of the date that the Company was designated by the Public Utilities Commission of Texas ("Texas PUCO") as a CETC -- May 22, 2003. If this waiver Petition is granted, Grande will immediately take the necessary steps to make all filings with USAC necessary to receive support for the second, third and fourth quarters of 2003.

As explained fully below, Grande was unable to comply with the December 30, 2002 line count submission and the January 1, 2003 certification deadline under the FCC's rules *for no other reason* than the date on which the Company was designated as a CETC by the Texas PUCO. Because Grande was designated a CETC on May 22, 2003, it was, *by sole virtue of the date of its designation*, unable to submit the line count data and certification documents necessary to receive support for the second, third and fourth quarters of 2003 – despite being eligible for funding in the second quarter of 2003 (specifically, as of the date of its designation, May 22, 2003), pursuant to Section 214(e) of the Act. Moreover, the fact that a carrier is permitted to submit quarterly line counts to USAC prior to the date of its designation as a CETC, and that the filing of such line counts prior to a carrier's designation, is likely *necessary* for a CETC to receive universal service support in a timely fashion, is nowhere made evident in either the FCC's or USAC's written rules or policies. Rather, this appears to be a purely internal policy that results in linking data submissions made pursuant to Section 54.307(c) to support payments

received as a result of certification filings made in accordance with Section 54.314(d). While from an administrative viewpoint, it is certainly understandable that USAC must have advance loop data with which to base a CETC's universal service support payments, nowhere is it written that a CETC must submit such data *prior to the time of its designation*, in order to receive universal support in a timely manner.

As explained below, a waiver of these rules would be both in the public interest and fully consistent with the Commission's overarching universal service goal of competitive neutrality. Additionally, well-established FCC precedent in granting similar waivers to other CETCs under similar facts render approval of this waiver petition both appropriate and warranted. Grande also seeks expedited approval of this request, so that vital high cost universal service support to Grande may commence. Expedited action is critical in this case to minimize economic and competitive damage to Grande by avoiding further unwarranted and unnecessary delay of universal service funding to a Company who, through no fault of its own and due to the nuances of USAC's universal service funding policies under the High Cost Program ("HCP"), is facing *more than 8 months* of delayed universal service funding.

BACKGROUND

Grande is a CETC in the State of Texas, where it has been providing retail telecommunications services, cable and Internet access services to the public, including in the rural-high cost area of San Marcos, since February 2001. Pursuant to Section 254(e) of the Communications Act of 1934, as amended ("Act"), and to Sections 54.307 and 54.314 of the Commission's rules, as a designated CETC, Grande is entitled to receive federal high cost universal service support. As a prerequisite for receiving such support, Section 54.314(d) of the FCC's rules requires carriers to file certifications with the Commission by certain dates, in order

to receive universal service funding for certain quarters of the year. As a further prerequisite for receiving such support, Section 54.307 requires CETCs to submit quarterly working loop data, upon which rural high cost funding is based.

Section 254(e) of the Communications Act of 1934, as amended (“Act”), provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support. A carrier that receives such support shall use that support only for the provision, maintenance and upgrading of services for which support is intended.”² Once a carrier is designated as an eligible telecommunications carrier, it must make certain filings with the FCC and USAC before it may begin receiving universal service support.³

On August 2, 2002, Grande submitted its application to the Texas PUCO for designation as an Eligible Telecommunications Carrier (“ETC”). Approval of this application rendered Grande eligible to receive support from the HCP of the Federal Universal Service Fund (“FUSF”). In that same application, Grande sought designation as an Eligible Telecommunications Provider (“ETP”), so as to be eligible to receive support from the Texas Universal Service Fund (“TUSF”).

While its designation application was pending with the Texas PUC, Grande contacted USAC to inquire as to the filings it was required to make to ensure that it would receive rural high cost support under the HCP in the event that the Texas PUC granted its application and designated it a CETC. While the Company received certain information about the filings required to be made after such time as it was designated as a CETC, at no time was it informed by USAC that it should submit quarterly line count reports *prior to such time* as it was designated as a CETC, in order to ensure that there was no major gap in the support expected to

² 47 U.S.C. § 214(e)

³ See, e.g. 47 C.F.R. §§ 54.307, 54.314.

be received by the Company under the FUSF. Neither USAC nor the FCC have any written rule or policy that requires or, at minimum, *advises* carriers awaiting ETC designation to submit quarterly line count reports *prior to designation* in order to ensure timely funding of support under 54.314(d). In fact, the “Checklist for a New Carrier Seeking High Cost Support,” set forth on USAC’s website, which specifies the filings that ETCs seeking high cost support must submit before receiving funding, makes no mention that this is the case. Indeed, it would be illogical for the Company or any carrier to be required to make quarterly line count submissions prior to the date of its designation as a CETC, absent a specific directive to do so. This is because Section 54.307 of the FCC’s rules, which governs line count submissions, applies only to “competitive *eligible* telecommunications carriers”⁴ and a carrier certainly is not *eligible* to receive universal service support until it has been so designated.

However, as explained in this Petition, USAC’s policy is to link the submission of working loop data, filed pursuant to Section 54.307(c), to support payments received as a result of certification filings made in accordance with Section 54.314(d). Given this policy, even if a carrier otherwise fully complies with the certification and line count submission deadlines specified in the FCC’s rules, it will not necessarily receive the universal service funding permitted under Section 54.314(d) of the FCC’s rules in the timeframes specified by that rule. This has occurred in the case of Grande, resulting in a delay of high cost funding to the Company of more than 8 months, through no fault of its own, but due solely to the mechanics of USAC’s funding procedures.

⁴ 47 C.F.R. § 54.307.

APPLICABLE REGULATIONS AND POLICIES

Section 54.314(d) sets forth the filing deadlines for receiving support for High Cost Loop (“HCL”), Local Switching Support (“LSS”), Long Term Support (“LTS”) and Interstate Common Line Support (“ICLS”):

- (1) Certifications filed on or before October 1. Carriers for which certifications are filed on or before October 1 shall receive support pursuant to §§ 54.301, 54.305, and/or 54.307 and/or Part 36, Subpart F of this chapter, in the first, second, third and fourth quarters of the succeeding year;
- (2) Certifications filed on or before January 1. Carriers for which certifications are filed on or before January 1 shall receive support pursuant to §§ 54.301, 54.305, and/or 54.307 and/or Part 36, Subpart F of this chapter, in the second, third and fourth quarters of that year;
- (3) Certifications filed on or before April 1. Carriers for which certifications are filed on or before April 1 shall receive support pursuant to §§ 54.301, 54.305, and/or 54.307 and/or Part 36, Subpart F of this chapter, in the third and fourth quarters of that year
- (4) Certifications filed on or before July 1. Carriers for which certifications are filed on or before July 1 shall receive support pursuant to §§ 54.301, 54.305, and/or 54.307 and/or Part 36, Subpart F of this chapter, in the fourth quarter of that year.

Section 54.307(c) requires CETCs to submit the following reports regarding working loop data, according to the following schedule, in order to receive support for HCL, LSS, LTS and ICLS:

- (1) No later than March 30 of each year, submit data as of September 30th of the previous calendar year;
- (2) No later than July 31 of each year, submit data as of December 31st of the previous calendar year;
- (3) No later than September 30 of each year, submit data as of March 31st of the existing calendar year;
- (4) No later than December 30th of each year, submit data as of June 30th of the existing calendar year.

However, it is *only USAC's internal documentation that directly ties the timeframe for funding eligibility under Section 54.314(d) to the quarterly submissions for working loop data.*

made pursuant to Section 54.307(c). Moreover, it is only USAC's internal documentation that makes a distinction between the timeframe within which a carrier is eligible to receive funding for HCL, LSS and LTS and the timeframe within which a carrier is eligible to receive funding for ICLS -- this despite the fact that the certification deadlines for funding and the deadlines for the quarterly line count submissions are exactly the same under the FCC's rules for all four of these elements. USAC's internal policy is as follows:

Competitive Carriers' Line Count Submissions for **HCL, LSS and LTS**

Filing Date for Line Counts	Time Frame of Reported Data	Type of Line Count Report	Affects Payments for Support Quarter
March 30	Lines served as of 9/30 prior year	Mandatory	3rd and 4th Qs of current year
July 31	Lines served as of 12/31 prior year	Mandatory	1st Q of following year
September 30	Lines served as of 3/31 of current year	Mandatory	1 st Q of following year
December 30	Lines served as of 6/30 of current year	Mandatory	2 nd Q of following year

Competitive Carriers' Line Count Submissions for **ICLS**

Filing Date for Line Counts	Time Frame of Reported Data	Type of Line Count Report	Affects Payments for Support Quarter
March 30	Lines served as of 9/30 prior year	Mandatory	3rd Q of current year
July 31	Lines served as of 12/31 prior year	Mandatory	4th Q of current year
September 30	Lines served as of 3/31 of current year	Mandatory	1 st Q of following year
December 30	Lines served as of 6/30 of current year	Mandatory	2 nd Q of following year

As clearly can be seen from this table, the March and July line count submissions for the above-referenced high cost elements relate to support payments for different quarters for ICLS as compared to the other elements, despite the fact that these submissions are made at the same

time.⁵ The table also illustrates that Section 54.314(d)(4)'s language declaring that "Carriers for which certifications are filed on or before July 1 *shall receive support . . . in the fourth quarter of that year,*" is not necessarily the case. As the table shows, *for HCL, LSS and LTS, fourth quarter funding is predicated upon the submission of the March 30 line count data.* Therefore, absent that March 30 loop count submission, even if a carrier is certified by July 1 and thus otherwise has satisfied the requirements of 54.314(d)(4), under USAC's system, a carrier will not receive funding for the fourth quarter of the year for HCL, LSS, LTS. Indeed, such a carrier would not likely receive funding until well into the 1st quarter of the following year, more than 6 months following its certification.

Grande was designated as a CETC by the Texas PUC on May 22, 2003. ***See Attachment A.*** This designation rendered Grande eligible to receive high cost support for the same elements for which CenturyTel qualifies – namely, HCL, LSS, LTS and ICLS. On June 27, 2003, the Texas PUC, on behalf of Grande and pursuant to Section 54.314(a), certified to the FCC that Grande would use federal high-cost support for such elements to "for the provision, maintenance and upgrading of its facilities and services as intended."⁶ ***See Attachment B.*** With respect to ICLS, on June 2, 2003, pursuant to Section 54.904, Grande certified to the FCC that it would use

⁵ USAC states that this difference in funding is due to different funding timeframes – *i.e.* calendar year versus fiscal year – established for the different elements.

⁶ Pursuant to the FCC's and USAC's policies, state commissions are responsible for certifying to the FCC and USAC that the designated ETCs will use support received for HCL, LSS and LTS for the provision, maintenance and upgrading of facilities and services for which the support is intended. *See* 47 C.F.R. § 54.314. Based on its past practice in submitting ETC certifications to USAC, the Texas PUCO believed that its initial letter, sent to the FCC and USAC on May 27, 2003, enclosing a copy of Grande's CETC designation order, was sufficient to satisfy the requirements of Section 54.314 of the Commission's rules. ***See Attachment C.*** This belief was based upon the fact that, as part of the application process for designation as a CETC, the Company had submitted an affidavit to the Texas PUCO regarding its intended uses of any federal universal service support received. Upon being informed by USAC on June 25, 2003, that alternate language was required to satisfy Section 54.314 of the Commission's rules, the Texas PUCO issued a new certification letter on Grande's behalf, filed with both the FCC and USAC on June 27, 2003.

support received for ICLS to “only for the provision, maintenance, and upgrading of facilities and service for which the support is intended.” *See Attachment D.* Accordingly, Grande has satisfied the requirements of 54.314(d)(2) for certification on or before July 1, 2003.

Upon being designated as a CETC by the Texas PUC, Grande again contacted USAC to determine when the Company would begin receiving payments under the HCP and to ascertain what filings would need to be made to assure timely funding. Given that the language of Section 54.314(d)(4), which applies to all of the elements for which the Company qualified – HCL, LSS, LTS and ICLS – as a CETC, clearly states that “Carriers for which certifications are filed on or before July 1 *shall receive support . . . in the fourth quarter of that year,*” Grande logically had assumed that, at minimum, if it made all filings necessary for it to be considered “certified” by July 1, 2003, it would receive support for the fourth quarter of 2003. However, when contacted, USAC informed the Company that while it was the case that if it was certified by July 1, 2003, Grande would receive FUSF support for ICLS in the fourth quarter of 2003, this was not the case with respect to all of the other elements – HCL, LSS and LTS. For those elements, even if the Company was certified by July 1, 2003, and had otherwise fully complied with the requirements of Section 54.314(d)(4), the Company would not receive funding until the first quarter of 2004 -- *some 8 months following its designation as a CETC.*

USAC advised the Company that the reason for this delayed funding for HCL, LSS and LTS was that funding for these elements operated under a different funding schedule than that of ICLS, which operated on a fiscal, as opposed to calendar year. Because of this differing funding schedule, unless the Company had submitted line count data for HCL, LSS and LTS by March 30, 2003, some two months *before* the Company received its designation by the Texas PUC, it would not be eligible for funding for these elements until 2004. Nowhere, however, in the

FCC's rules or in USAC's policies or website documentation is this stated to be the case. In essence, therefore, USAC's *internal policy* directly links the filing of the quarterly line count submissions required under Section 54.307(c) to the funding periods for CETCs certified in accordance with the deadlines established in Section 54.314(d) of the FCC's rules.

As a result, to obtain universal service funding, it is not enough for a carrier to be fully "certified" in accordance with the timeframe requirements of Section 54.314 of the FCC's rules, and to have made line count submissions in accordance with the date-specific requirements of Section 54.307 of the FCC's rules, after such time as a CETC has received its designation. This is the case despite the fact that the FCC's certification rules specify clearly that if a carrier is certified by a certain date, it is entitled to funding in a certain subsequent quarter for all of the elements for which it qualifies. The line count submissions set forth in the FCC's rules do not specify to which *funding period* they relate, and thus it is unclear from Section 54.307 of the FCC's rules the precise effect that the line count filings will have on the timeframe by which a carrier will receive universal service support.

Because the rules do not specify that the funding periods set forth in the certification deadlines of Section 54.314 are directly dependent on quarterly line count data submissions made pursuant to Section 54.307, Grande, of course, did not know and indeed could not know, to submit line count data for time periods with deadlines occurring *months before* the date of the Company's designation as a CETC. As a result, absent the FCC's grant of this Petition for Waiver, the internal mechanics of this unspecified USAC policy will result in a delay of *universal service funding until 2004* for most of the elements for which Grande qualifies for universal service support. This result is inconsistent with the Commission's fundamental

universal service goal of competitive neutrality⁷ because it denies funding for the third and fourth quarter of 2003 to Grande for no other reason other than the date of its ETC designation,⁸ resulting in grave economic inequity to the Company. As well, such an outcome thwarts a paramount underlying purpose and statutory goal of the FCC's universal service funding mechanism – namely, to get universal service support to eligible telecommunications carriers as quickly as possible, so that such carriers may provide customers with access to telecommunications service at reasonable rates.⁹

⁷ See *In re Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, 12 FCC Rcd 8776, 8801-8806 (1997) (establishing “competitive neutrality” as an additional principle upon which [the FCC] base[s] policies for the preservation and advancement of universal service.”) In that order, the FCC defined the principle of competitive neutrality as follows: “Universal service support mechanisms should be competitively neutral. In this context, competitive neutrality means that universal service support mechanisms and rules neither unfairly advantage or disadvantage one provider over another, and neither fairly or unfairly favor nor disfavor one technology over another.” *Id.* para. 8801.

⁸ As the Commission has noted in another similar Petition for Waiver, filed by Guam Cellular and Paging, Inc. (“Guamcell”), “competitive neutrality is a fundamental principal of the Commission’s universal service policies.. Denying first quarter and second quarter 2002 support to Guamcell, a competitive ETC, merely because the timing of its ETC designation precluded it from timely filing its October 1 certifications would undermine the Commission’s goals of competitive neutrality. Because the Commission has found that ‘competitively neutral access to support is critical to ensuring that all Americans have access to affordable telecommunications,’ Guamcell should not be penalized as a result of the timing of its ETC designation.” See *in re Federal-State Joint Board on Universal Service, Guam Cellular and Paging, Inc., Petition for Waiver of Section 54.314 of the Commission’s Rules and Regulations*, Order, CC Docket No. 96-45, DA 03-1169 para. 7 (rel. April 17, 2003) (“Guamcell”).

⁹ See *In re Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 00-208 para. 114 (rel. June 30, 2000) (stating that “If new entrants do not have the same opportunity to receive universal service support as the incumbent, such carriers may be unable to provide service and compete with the incumbent in high-cost areas. As the Commission has previously concluded, competitively neutral access to such support is critical to ensuring that all Americans, including those that live in high-cost areas, have access to affordable telecommunications services.”); See also *In re San Carlos Apache Telecommunications Utility, Inc., Petition for Waiver of Sections 36.611 and 36.612 of the Commission’s Rules*, Order, CC Docket No. 96-45, DA 01-1834 para. 7 (rel. Aug. 10, 2001).

REQUEST FOR WAIVER

Section 1.3 of the FCC's rules allows the Commission to waive the application of any of its rules "for good cause shown, in whole or in part, at any time. . . ."¹⁰ Courts have held that good cause exists to waive a Commission rule if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.¹¹ In waiving universal service funding rules and procedures, the Commission has stated that "precedent makes clear that a regulation which is not required by statute¹² may, in appropriate circumstances be waived *and must be waived where failure to do so would amount to an abuse of discretion.*"¹³ Moreover, in another recent order granting a waiver of a filing window deadline for applications for universal service support for schools and libraries, the Commission declared that:

[a] rule may be waived where the particular facts make strict compliance inconsistent with the public interest. In addition, we may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *Waiver is, therefore, appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.*¹⁴

¹⁰ 47 C.F.R. §1.3.

¹¹ *WAIT Radio v. Federal Communications Comm'n*, 418 F.2d 1153, 1159 (D.C. Cir. 1969) (noting that the "combination of a general rule and limitations is the very stuff of the rule of law, and with diligent effort and attention to essentials, administrative agencies may maintain the fundamentals of principled regulation without sacrifice of administrative flexibility and feasibility.")

¹² In the instant case, the waivers sought by Grande do not relate to rules or procedures specified by Congress, and thus such rules and procedures are not "required by statute."

¹³ *In re Changes to the Board of Directors of the National Exchange Carrier Association, Inc.; Federal-State Board on Universal Service*, Order, 15 FCC Rcd 7197 para. 6 (1999) (emphasis added).

¹⁴ *In re Federal-State Board on Universal Service, Universal Service Support for Eligible Schools and Libraries Year 3 Filing Window*, Order, 15 FCC Rcd 13932, para. 8 (2000) (citing *Northeast Cellular Telephone Co. v. Federal Communications Comm'n*, 897 F.2d 1164, 1166 (D.C. Cir. 1990), and *WAIT Radio*, 418 F.2d at 1157) (emphasis added).

Grande requests a waiver of both the December 30, 2002 line count submission deadline established in Section 54.307(c)(3) of the Commission's rules as well as a waiver of the January 1, 2003 certification deadline established in Section 54.314(d)(2) of the Commission's rules. Grande specifically requests that the Commission direct USAC to permit the Company to retroactively file its December 30, 2002 line count submission, and deem the Company certified as of January 1, 2003, in order to permit the Company to receive rural high-cost universal service support effective in the second quarter of 2003, specifically, as of the date that the Company was designated by the Texas PUC as a CETC -- May 22, 2003. If this waiver Petition is granted, Grande immediately will make the requisite filings with the USAC's necessary to receive universal service support as of the second quarter 2003, effective on May 22, 2003.

As explained previously, USAC's internal policy of making funding under the certification deadlines established in Section 54.314(d) of the FCC's rules directly dependent on the filing of the quarterly line count submissions, required under Section 54.307(c), results in an inequitable and burdensome situation for Grande and one that will have the consequence of forcing a company that fully qualifies for high cost universal service support as of the date of its designation as a CETC -- May 22, 2003 -- to wait *more than 8 months* (i.e., from May 2003 until first quarter 2004) to begin receiving funding for certain elements (i.e., HCL, LSS, LTS), and *more than 5 months* (i.e. from May 2003 until fourth quarter 2003), and to begin receiving funding for still another element, ICLS.

This policy is a problem for three primary reasons: (1) first, because this requirement is nowhere stated in the FCC's rules or in USAC's external written policies and thus is not self-evident; (2) second, because this policy *de facto* requires a carrier to submit line count data that is required under the FCC's rules to be filed only by "competitive *eligible* telecommunications

carrier(s)” *before* a carrier is even designated as an eligible carrier, if that carrier wants to receive funding, in a reasonable timeframe, for those support elements for which it qualifies; and (3) because this policy results in delaying universal service funding to a CETC for reasons completely outside of its control and due solely to the procedural mechanism that USAC and the FCC have created for distribution and receipt of high cost funding. Given these facts, and the inequitable result that would befall Grande in the absence of waiver of the Sections 54.307 and 54.314 of the FCC’s rule, a waiver is both warranted and justified in the instant case.

In the case of Grande, its designation as a CETC was effective May 22, 2003. As noted herein, Grande has made all requisite filings necessary for the Company to be considered certified as on July 1, 2003. The FCC’s rules specify that “Carriers for which certifications are filed on or before July 1 *shall receive support . . . in the fourth quarter* of that year.” Given this, the Company undoubtedly should receive universal service funding in the fourth quarter of this year, at minimum, for all elements for which it qualifies for universal service support. Notwithstanding this fact, as explained above, USAC’s internal policy of linking quarterly loop count submissions to funding periods set forth in the FCC’s certification deadline rules, has resulted in a inequitable situation in which Grande will not receive universal service funding for the fourth quarter of this year, with the exception of funding for ICLS.

In essence, therefore, absent a waiver, Grande will have to wait *more than 8 and likely 10 months*¹⁵ from the date of its designation on May 22, 2003 to receive its first universal service support payment, which is expected in early March 2004 for the period commencing on January

¹⁵ This is because USAC, per its current policy, does not mail out the checks relating to CETC support until the end of the second month of the quarter, which, in this case, will render receipt of universal service support for HCL, LSS and LTS not likely until sometime in March 2004.

1, 2004.¹⁶ Forcing a CETC such as Grande to experience these kinds of exorbitant delay in its receipt of universal service support for telecommunications services provided to the public in rural areas *after receiving CETC designation* is certainly not in the public interest and cannot possibly be an intended consequence of the FCC's and USAC's universal service rules and policies. Nevertheless, absent a waiver, it will be the result in this case. This system unfairly penalizes new entrants, most of who are unfamiliar with internal, unwritten USAC policies, and violates the Commission's long-held universal service policy of competitive neutrality.¹⁷

Significantly, the Commission recently has granted requests for waiver of the same rules for other CETCs, under strikingly similar facts and for identical reasons – namely, to ensure that such carriers received high cost universal service support at the time of their designation or certification, in order to avoid months of lost support.¹⁸

In the case of RFB Cellular, the Commission granted the carrier's request for a waiver of the October 1, 2001 certification filing deadline set forth in Section 54.314(d)(1) of the FCC's rules for high cost universal service support in rural areas, as well as RFB Cellular's request for a waiver of certain quarterly filing deadlines for line-count data set forth in Section 54.307(c) of the Commission's rules. The FCC granted these waivers, which are nearly identical to those sought by Grande in the instant Petition, in order to permit RFB Cellular to receive high-cost universal service support as of the date of RFB Cellular's designation as an ETC, on November 20, 2001. The FCC did so because RFB Cellular could not have met the October 1, 2001

¹⁶ Again, USAC states the different funding timeframes for ICLS are due to the fact that this element is funded pursuant to a fiscal year, as opposed to the other elements, which are funded by calendar year.

¹⁷ *Supra* notes 7-8, at 14.

¹⁸ See, e.g., *In re Federal-State Joint Board on Universal Service, RFB Cellular, Inc., Petitions for Waiver of Sections 54.314(d) and 54.307(c) of the Commission's Rules and Regulations*. Order, CC Docket No. 96-45, DA 02-3316 (rel. Dec. 4, 2002) ("RFB Cellular"); see also *Guamcell*.

certification deadline, given that its designation did not occur until nearly two months later. Absent this waiver, RFB Cellular would have been forced to wait until the second quarter of 2002, more than 5 months after the date of its designation, before receiving universal service support. In so granting the waiver of Section 54.314 of its rules, the Commission declared as follows:

We find that good cause exists to waive the certification filing deadline contained in the section 54.314 of the Commission's rules so that RFB Cellular can receive support for the first quarter of 2002. RFB Cellular has demonstrated that special circumstances warrant a deviation from the filing deadline provided in section 54.314(d) of the Commission's rules. Because RFB Cellular did not receive its ETC designation until November 1, 2003, it could not have met, under any circumstances, the October 1, 2001 filing deadline for receiving support beginning in the first quarter of 2002. RFB Cellular, however, made the necessary certification on December 6, 2001, only weeks after having been designated as an ETC by the Michigan Commission. The certification filing schedule set out in the Commission's rules was adopted to ensure that USAC has sufficient time to process the certifications prior to its submission of estimated support requirements to the Commission. *It would be onerous, however, to deny an ETC receipt of universal service support for an entire quarter, as a result of a particular ETC designation having occurred after the certification filing deadline.* We therefore find that RFB Cellular has demonstrated special circumstances that justify a waiver of section 54.314. In this instance, these special circumstances outweigh any processing difficulties that USAC may face as a result of the late-filed certification.¹⁹

With respect to RFB Cellular's request to waive Section 54.307(c), the FCC further held:

For similar reasons, we find that good cause warrants a waiver of the deadlines for filing line-count data established in section 54.307 of the Commission's rules so that RFB Cellular can receive support for the first quarter 2002 and fourth quarter 2001. Absent a waiver of the March 30 deadline for support in fourth quarter 2001, and the September 30 deadline for support in first quarter 2002, RFB Cellular would not begin receiving support until second quarter 2002. *As noted above, it would be inconsistent with the Commission's goal of competitive neutrality and section 254(e) to delay RFB Cellular's receipt of high-cost support merely because it received its ETC designation on November 20, 2001, after the March 30, 2001 and September 30, 2001 line-count filing deadlines.*

¹⁹ RFB Cellular para. 8 (emphasis added).

Accordingly, we find that a waiver of Section 54.307(c) is warranted. We therefore grant RFB Cellular's request for waiver of the filing deadlines in section 54.307 of the Commission's rules. We direct USAC to accept RFB Cellular's November 1, 2002 data submission as timely for purposes of receiving support for first quarter 2002. Also, upon release of this Order, RFB Cellular shall submit to USAC the data that would have been due for the March 30, 2001 filing deadline so that it can receive support for the fourth quarter 2001, prorated to begin on November 20, 2001.

Likewise, in its order granting the request of Guam Cellular and Paging Co. ("Guamcell") for waiver of the October 1, 2002 certification filing deadline of Section 54.314(d)(1) of the FCC's rules for high cost universal service support, the FCC permitted Guamcell to receive universal service support as of the date of its certification filing under Section 54.314(d) of the FCC's rules.²⁰ This permitted Guamcell to receive funding for both the first and second quarters of 2002, which would not otherwise have been possible, given that it filed for certification on February 1, 2002. In granting Guamcell's request for waiver, the Commission again found good cause existed for this waiver, given the particularities of the certification filing schedule set forth under its rules:

We find that good cause exists to waive the certification deadlines contained in section 54.314 of the Commission's rules so that Guamcell can receive support beginning the first quarter of 2002. Guamcell has demonstrated that special circumstances warrant a deviation from the filing deadlines provided in section 54.314(d) of the Commission's rules. Because Guamcell did not receive its ETC designation until January 25, 2002, it could not have met, under any circumstances, the October 1, 2001 filing deadline for receiving support beginning in the first quarter of 2002, or the January 1, 2002 deadline for receiving support in the second quarter of 2002. Guamcell, however, made the necessary certification on February 1, 2002, one week after having been designated as an ETC by the Commission. The certification filing schedule set out in the Commission's rules was adopted to ensure that USAC has sufficient time to process the certifications prior to its submission of estimated support requirements to the Commission. It would be onerous, however, to deny an ETC receipt of universal service support for almost two quarters as a

²⁰ Guamcell does not appear to have sought funding from the date of its designation as a CETC.

result of a particular ETC designation having occurred after the certification filing deadline. We therefore find that Guamcell has demonstrated special circumstances that justify a waiver of section 54.314. In this instance, these special circumstances outweigh any processing difficulties that USAC may face as a result of the late-filed certification.²¹

The facts of Grande's case are strikingly similar to those of RFB Cellular and Guamcell. In all three cases, due solely to the mechanics of USAC's high cost funding procedures, the fact that the date of each CETC's designation falls sometime after the certification and working loop submission deadlines established in Section 54.314(d) and Section 54.307(c) of the Commission's rules has resulted in an inequitable situation in which each of these CETCs would be forced to wait *several quarters* before beginning to receive high cost support, absent a waiver of the FCC's certification and line count deadlines.

The public interest will not be served by delaying high cost universal service support funding to Grande due to circumstances that were not within the Company's control. Absent such funding, Grande will be severely hampered in its ability to provide competitive telecommunications services to consumers in high cost areas like San Marcos. Moreover, such delayed universal service support to competitive carriers is not compatible with the Commission's express universal service goal of competitive neutrality, as specifically acknowledged by the FCC in the case of RFB Cellular.²²

Given the Commission's well-established precedent in granting waivers of these rules to RFB Cellular and Guamcell for the precise reasons that Grande seeks in the instant Petition, we believe it is appropriate, consistent with the Commission's universal service goal of competitive neutrality and fully in the public interest, for the FCC to grant to Grande a waiver of the December 30, 2002 line count submission deadline established in Section 54.307(c)(3) of the

²¹ *Guamcell* para. 6 (emphasis added).

²² *Supra* note 18, at 18.

Commission's rules, well as a waiver of the January 1, 2003 certification deadline established in Section 54.314(d)(2) of the Commission's rules.

REQUEST FOR EXPEDITED TREATMENT

Action on this waiver request must be expedited in order to ensure that vital high cost universal service support to Grande can begin. Expedited action is critical in this case to minimize economic and competitive damage to Grande by avoiding further unwarranted and unnecessary delay of universal service funding to Grande, which, through no fault of its own and due to the nuances of USAC's universal service funding policies under the HCP, is facing more than 8 months of delayed universal service funding.

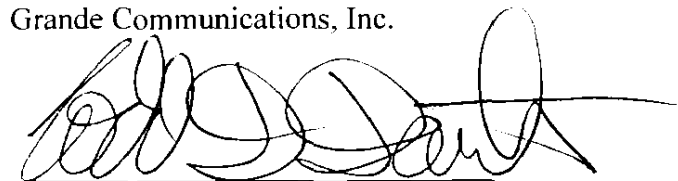
CONCLUSION

For all of the reasons set forth above, Grande respectfully requests, pursuant to Section 1.3 of the FCC's rules, a waiver of Section 54.307(b)(4) and Section 54.314(d)(3) of the Commission's rules.

Respectfully submitted,

Grande Communications, Inc.

By:



Brad E. Mutschelknaus

Todd D. Daubert

Erin R. Swansiger

Its Attorneys

Dated: July 1, 2003

cc: Andrew Kever, Esq., Grande Communications, Inc.
Thomas Buckley, Esq., Wireline Competition Bureau
Sharon Webber, Esq., Wireline Competition Bureau